

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN TERRELL DAVIS,

Defendant-Appellant.

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UNPUBLISHED

November 19, 2019

No. 346320

Macomb Circuit Court

LC No. 2018-000624-FC

Before: M. J. KELLY, P.J., and FORT HOOD and SWARTZLE, JJ.

PER CURIAM.

Defendant, Marvin Davis, appeals as of right his jury trial convictions of assault with intent to commit murder, MCL 750.83, possession of a firearm by a person convicted of a felony (felon-in-possession of a firearm), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Because there is sufficient evidence to support Davis’s conviction for assault with intent to commit murder, we affirm.<sup>1</sup>

**I. BASIC FACTS**

On January 6, 2018, Davis shot Summer Foley while she was folding clothing in her bedroom. At the time, Davis and Foley were in a dating relationship, and they had a history of arguing frequently and of pushing each other. Foley testified that they argued on the day of the shooting. Davis left her home and returned 15 to 30 minutes later. She stated that he walked into her room, said something unintelligible, put a revolver against her stomach, and shot her. Foley’s nephew testified that he ran toward Foley’s room and saw her in the hallway. She told him that Davis had shot her. Davis, who was initially by Foley’s bedroom door, left the home and returned approximately five minutes later. The police were called. Foley and her nephew stated that they had lied to the police regarding the circumstances of the shooting. The police,

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<sup>1</sup> Davis does not challenge his convictions for felon-in-possession or felony-firearm. Accordingly, we will not review either conviction.

however, observed footprints and a drop of blood in the snow leading from Foley's house to Davis's house, which was next door. After obtaining permission to search the adjacent property, they discovered a revolver inside a barbecue grill. Subsequently, at the hospital, Foley admitted to the police that Davis shot her. She stated that she was untruthful about the shooting because she was dating Davis and did not want to get him in trouble. She also stated that she feared Davis and retaliation from Davis's family. Foley's nephew also eventually told the police that Davis shot Foley and that he had lied at Foley's request. After being arrested, Davis told the police that he had ingested two alcoholic drinks and then argued with Foley in her bedroom. He testified that Foley pulled a gun on him and when he grabbed it the gun discharged. His defense at trial was that the shooting was accidental.

## II. SUFFICIENCY OF THE EVIDENCE

### A. STANDARD OF REVIEW

Davis argues that there was insufficient evidence to support his conviction for assault with intent to commit murder. This Court reviews *de novo* challenges to the sufficiency of the evidence. *People v Gaines*, 306 Mich App 289, 296; 856 NW2d 222 (2014). The evidence is viewed "in the light most favorable to the prosecution, to determine whether the trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *Id.*

### B. ANALYSIS

The elements of assault with intent to commit murder are: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Brown*, 267 Mich App 141, 148; 703 NW2d 230 (2005) (quotation marks and citation omitted). Here, Davis argues that there was insufficient evidence to establish that he had an actual intent to kill. "'Intent to kill' may be inferred from all the facts in evidence, including use of a deadly weapon, taking aim at a victim, injury to the victim, evidence of flight and attempts to hide evidence." *People v Everett*, 318 Mich App 511, 531 n 10; 899 NW2d 94 (2017) (quotation marks and citation omitted). Relevant to this appeal, "[a] gun is a deadly weapon and firing a deadly weapon at another person—once or several times—undoubtedly involves the use of deadly force, because it is an act for which the natural, probable, and foreseeable consequence is death." *People v Anderson*, 322 Mich App 622, 629; 912 NW2d 607 (2018) (quotation marks and citation omitted). Because it can be difficult to prove a defendant's state of mind, "minimal circumstantial evidence is sufficient to show an intent to kill . . ." *People v Henderson*, 306 Mich App 1, 11; 854 NW2d 234 (2014).

Davis highlights Foley's testimony that she does not believe Davis intended to kill her. However, the jury was not required to credit Foley's interpretation of Davis's intent. Here, there was sufficient evidence to support the jury's finding. Davis and Foley argued for three to four weeks before the shooting occurred, and they argued for at least 20 to 30 minutes on the day of the shooting. Before Davis shot Foley, he left her home and returned 15 to 30 minutes later with a revolver. Davis walked into Foley's bedroom, placed the loaded revolver against her stomach, and pulled the trigger. A natural and expected consequence of such behavior is to produce death.

Although Davis suggests his decision to fire a single shot into a part of Foley's body that would not normally result in immediate death, the prosecution only had to prove intent to kill, not intent to cause immediate death. Davis also suggests that he lacked a motive to kill Foley because nothing "unique" happened on the day of the shooting. Instead, he and Foley were just arguing like they always did. Motive, while potentially relevant, is not an essential element of the crime. *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008). Further, the jury was free to infer that the motive for the killing arose from the 20 to 30 minute argument that occurred before Davis left Foley's home and then returned to shoot her in the stomach. In addition, the jury could reasonably infer that Davis intended to kill Foley based on his actions after the shooting. Davis left the home after shooting Foley and hid his gun in a barbeque grill. He then was, by his own admission, less than honest with the police when they arrived at the scene.

Finally, to the extent that Davis suggests his ability to form the intent necessary to kill because he was voluntarily intoxicated, we conclude that his claim is without legal merit. See *People v Maynor*, 470 Mich 289, 296; 683 NW2d 565 (2004) (stating that intoxication is not a defense to a specific intent crime); see also MCL 768.37 (abolishing the defense of voluntary intoxication except in one narrow circumstance).

Affirmed.

/s/ Michael J. Kelly  
/s/ Karen M. Fort Hood  
/s/ Brock A. Swartzle